

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILBER E. COPELAND and DEPARTMENT OF THE ARMY,
CHILD DEVELOPMENT CENTER, Fort Drum, NY

*Docket No. 99-2143; Submitted on the Record;
Issued August 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on February 2, 1998.

Appellant, then a 41-year-old education technician in a child care facility filed a traumatic injury claim alleging that on February 2, 1998 he was exposed to a child in his classroom at work with chicken pox, which resulted in him contracting herpes zoster and herpetic meningitis. Appellant stopped work sometime after the incident and returned to work March 20, 1998.

Appellant submitted a prescription note with an illegible signature dated March 4, 1998, which indicated that he had been diagnosed with status post viral meningitis with continued acute headaches and admitted to the Veterans Hospital for further evaluation. Appellant submitted a second prescription note dated March 20, 1998, which diagnosed him further with herpes zoster and herpes meningitis and post-meningitis migraine. Appellant was cleared for work without restrictions. Appellant also submitted a discharge summary report dated August 26, 1998 for urgent care treatment for a severe migraine. The physician's signature was also illegible. The report indicated that appellant had migraines before, along with viral meningitis a year prior. He was cleared for work that day.

On February 18, 1999 the Office of Workers' Compensation Programs requested additional factual and medical information from appellant and the employing establishment necessary to establish his claim. Appellant provided factual information in response to the Office inquiry and submitted medical evidence previously of record.

By decision dated March 25, 1999, the Office denied appellant's claim for benefits on the grounds that the evidence submitted in support of his claim was insufficient to establish that he sustained an employment injury as alleged.

The Board finds that appellant failed to meet his burden of proof that he sustained an injury in the performance of duty on February 2, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

The Office, in determining whether an employee actually sustained an injury in performance of duty, first analyses of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

In the present case, appellant initially submitted prescription notes dated March 4 and 20, 1998 which diagnosed him with status post viral meningitis with continued acute headaches and then with herpes zoster, herpetic meningitis and post-meningitis migraine. Appellant also submitted an August 28, 1998 discharge summary report evidencing urgent care treatment for severe migraines and noting his history of viral meningitis. The Office notified appellant of this defect in the record and also advised the employing establishment of the necessity of submitting medical opinion evidence supporting appellant's claim, and allowed 30 days for a response. Appellant did not submit the requisite medical opinion evidence establishing a causal relationship between his diagnosed conditions and factors of his employment, but rather he submitted the prescription notes and discharge summary already of record.

The Board has often stated that an award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's belief of causal relation.⁵ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *John M. Tornello*, 35 ECAB 234 (1983).

⁵ *William Nimitz, Jr.*, 30 ECAB 567 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537 (1953).

into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated the diagnosed condition.⁶ Appellant failed to submit any evidence substantiating causal relationship to the alleged employment factor and therefore failed to discharge his burden of proof.

The decision of the Office of Workers' Compensation Programs dated March 25, 1999 is affirmed.

Dated, Washington, D.C.
August 25, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁶ *Id.*